

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In re Request of WORLDCOM, INC. and
INTERMEDIA COMMUNICATIONS INC., For
Approval to Transfer Control of Intermedia
Communications Inc. and its Wholly-owned
Subsidiary to WorldCom, Inc.

Application 00-11-048
(Filed November 11, 2000)

OPINION MODIFYING DECISION 01-03-079

1. Summary

This decision grants the petition of WorldCom, Inc. (WorldCom) and Intermedia Communications, Inc. (Intermedia) (collectively, Applicants) to modify Commission decision (D.) 01-03-079. In that decision, we approved WorldCom's and Intermedia's application to merge their operations, subject to certain conditions. Those conditions were recited in an order reflecting a settlement of federal antitrust litigation brought by the United States against Applicants challenging the merger on the ground that it would result in undue concentration in the Internet backbone market (the Lawsuit).¹

Since the Commission issued D.01-03-079, the parties to the Lawsuit have entered into an agreement superseding the agreement on which we conditioned D.01-03-079. Applicants now ask us to revise our decision to reflect their new

¹ *U.S. v. WorldCom, Inc. and Intermedia Communications, Inc.*, Civil Action No. 2789, Case No. 1:00CV02789(RWR) (D.D.C., filed Nov. 17, 2000).

agreement with the United States. This involves establishing a new entity that will be separately held from WorldCom and hold assets exclusively related to the Internet backbone, facilitating their sale. A court appointed trustee will oversee the separate entity until the assets are sold. We find the new agreement adequately safeguards competition in the Internet backbone market and therefore modify D.01-03-079 to incorporate the new agreement.

2. Background

WorldCom and Intermedia are both important providers in the Internet backbone market. For this reason, the United States Justice Department challenged their proposed merger on the ground it would result in undue concentration in that market. Ultimately, Applicants and the United States agreed to settle the Lawsuit. They agreed that, subsequent to the merger, certain Intermedia assets, including those related to the Internet backbone, would be spun off and sold to an independent third party. We approved of this arrangement and incorporated the federal settlement wholesale into D.01-03-079.

Since we issued D.01-03-079, sale of the separate Intermedia assets has proved difficult due to a generalized downturn in the telecommunications market. Therefore, the United States has agreed to, and the District Court has approved, a new arrangement with Applicants that seeks to enhance the chances that Intermedia's Internet backbone assets will be sold.² Where the original Intermedia assets to be sold included more than just the Internet backbone assets, now the asset sale will consist solely of those assets, held in an Intermedia entity

² The court order reflecting the new arrangement, *Modified Hold Separate Stipulation and Order*, dated August 30, 2001, appears as Appendix A to this decision.

named “Intermedia Business Internet” (IBI). According to the joint motion of Applicants and the United States filed in District Court,³

the . . . modifications [in the Hold Separate Stipulation and Order] are necessitated by unforeseen and substantial changes in the telecommunications marketplace which the parties reasonably could not have anticipated when they agreed to the [original Hold Separate Stipulation and Order].⁴

* * *

While Intermedia’s Internet backbone business remains an attractive asset, efforts to divest the business have been hampered by both the lack of interest by buyers in the non-Internet Intermedia assets and the need to revise the IBI business plans and operations in light of current market conditions.⁵

The Modified Hold Separate Stipulation and Order (Modified Order) continues to require that the Intermedia Internet backbone assets be held separately from WorldCom and ultimately sold, but no longer requires that non-Internet backbone assets be divested. The Modified Order also provides for court appointment of a trustee to oversee the IBI business and ultimately to sell it to a third party. The Modified Order continues to have as its primary goal the separation of WorldCom’s and Intermedia’s Internet backbone assets, and the ultimate divestiture of the latter to avoid undue concentration in the Internet backbone market.

³ *Memorandum in Support of Joint Motion to Modify Hold Separate Stipulation and Order*, filed August 29, 2001 in the District Court (Appendix B hereto).

⁴ *Id.* at 2.

⁵ *Id.* at 3.

3. Discussion

We are persuaded that the Modified Order provides adequate separation of WorldCom's and Intermedia's Internet backbone assets and helps preserve competition in the Internet backbone market. The Modified Order still requires that Intermedia's Internet backbone business be held separately from WorldCom and ultimately divested to an unrelated third party. The new provision for appointment of a trustee chosen by the United States and approved by the Court provide assurance that WorldCom will not have the opportunity to unduly influence IBI's day-to-day business operations, or the ultimate divestiture. We therefore modify D.01-03-079 to substitute the Modified Order for the original order, and condition our approval of the WorldCom-Intermedia merger on Applicants' compliance with the Modified Order.

4. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. We granted Applicants' request to merge, subject to conditions, in D.01-03-079.
2. Since we issued D.01-03-079, the conditions upon which we approved the merger have changed. Where we originally approved the merger subject to the terms of an earlier agreement between the United States Justice Department and Applicants, we now approve the agreement subject to a revised agreement, reflected in Modified Hold Separate Stipulation and Order (Modified Order) appended to this decision as Appendix A.

3. The Modified Order provides adequate separation of WorldCom's and Intermedia's Internet backbone assets and helps preserve competition in the Internet backbone market.

Conclusions of Law

1. All terms of the Modified Order should be incorporated herein and made conditions on our granting of this application. The Modified Order should supersede and replace the Hold Separate Stipulation and Order, which we incorporated into D.01-03-079 and made a condition of that decision.

2. Applicants' Petition for Modification should be granted.

O R D E R

IT IS ORDERED that:

1. Commission Decision (D.) 01-03-079 is modified to incorporate as conditions of that decision all terms of the Modified Hold Separate Stipulation and Order (Modified Order) in *United States of America v. WorldCom, Inc., and Intermedia Communications, Inc.*, Civil Action No. 2789, Case No. 1:00CV02789(RWR) (D.D.C., filed Nov. 17, 2000) (the Lawsuit), contained in Appendix A to this decision.

2. The Modified Order supersedes and replaces the Hold Separate Stipulation and Order filed in the Lawsuit , and originally contained in Appendix A to D.01-03-079.

3. In all respects, except those relating to the incorporation of the Modified Order, D.01-03-079 remains unchanged.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California

APPENDIX A
MODIFIED HOLD SEPARATE STIPULATION AND ORDER

NOTE: See CPUC Formal Files for Appendices A & B.

APPENDIX B

**MEMORANDUM IN SUPPORT OF JOINT MOTION
TO MODIFY HOLD SEPARATE STIPULATION AND ORDER**